

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

RONALD NEIL JOSEPH, SR., et al.,

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Plaintiffs.

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LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et. al.

2:09-cv-00966-HDM-LRL

ORDER

Defendants.

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Before the court is defendants' Emergency Motion to Compel Discovery (#24, filed July 13, 2010). The court has reviewed the motion, plaintiffs' Opposition (#26), plaintiff's Corrected Response (#27), and defendants' Reply (#26).

Plaintiffs¹ in this § 1983 action allege that defendants Las Vegas Metropolitan Police Department (“LVMPD”) and Sgt. Sara Bradshaw used excessive force when Sgt. Bradshaw shot and killed Ronald Neal Joseph, Jr (“decedent”). Pursuant to the court’s order on defendants’ Motion to Dismiss (#10), the claims that remain are: the decedent’s estate’s Fourth Amendment claim for excessive force; the estate’s Fourteenth Amendment claim alleging an equal protection violation on the basis of the decedent’s race; Janie’s Fourteenth Amendment due process claim for loss of familial companionship; and Ronald’s Fourteenth Amendment due process claim for loss of familial companionship. *See Minutes (#15).*

Discovery closes on December 31, 2010. Scheduling Order (#23). On April 8, 2010, defendants

¹ Plaintiffs are: (1) the decedent's father, Ronald Joseph, Sr., asserting claims as an heir ("Ronald"); (2) the decedent's mother, Janie Joseph, asserting claims as an heir ("Janie"); and (3) Ronald Joseph, Sr. as the administrator of the decedent's estate (hereinafter "the Administrator") asserting claims on behalf of the estate.

1 provided a Rule 26 disclosure statement that included all known witnesses, documents, radio/dispatch
 2 transmissions, photographs, and witness statements regarding the incident. Mot. (#24) at 4 and Exh.
 3 2. On April 12, 2010, plaintiffs served their Rule 26 initial disclosures. Plaintiffs listed as witnesses
 4 the witnesses already disclosed by defendants. *Id.* at 4. The disclosure provided that, “Plaintiffs have
 5 not yet made a computation of damages. Damages will, however, include, but not limited to, medical
 6 expenses, funeral expenses, deterioration of physical health, mental anguish, stress, loss of income, loss
 7 of relationship, love and comfort, and/or loss of enjoyment of life.” *Id.* at Exh. 3 p.4. Plaintiffs stated
 8 that they would “submit into evidence any evidence” which supports their claims but did not specify
 9 what that evidence may include. *See id.* at p.2. Plaintiffs have not supplemented the disclosure. *Id.*

10 On April 15, 2010, defendants served separate written discovery requests including
 11 Interrogatories and Requests to Produce on Ronald as heir, Janie as heir, and the Administrator. Mot.
 12 (#24) at 5; Exhs. 5-9. On May 24, 2010, Ronald and Janie as heirs provided a “combined” set of
 13 answers as their response to defendants’ discovery. *See id.* at Exhs. 10-11. The Administrator did not
 14 respond to discovery. On May 28, 2010, defendants sent a detailed letter to plaintiffs individually
 15 addressing each of the disputed interrogatory answers and demanding supplementation. *Id.* at Exh. 13.
 16 Among other things, defendants requested that each of the three plaintiffs answer the discovery
 17 separately and that each plaintiff complete the initial disclosures, including a computation of damages.
 18 In that letter, defendants also requested that plaintiffs provide three dates on which the plaintiffs would
 19 be available for deposition in Las Vegas.² *Id.*

20 On June 30, 2010, plaintiffs provided a response to the purported deficiencies noted in
 21 defendants’ letter. Plaintiffs’ response provided combined supplemental answers from Ronald and Janie
 22 to three of the disputed interrogatories. Mot. (#24) at Exh. 15. Plaintiffs refused to provide any relevant
 23 records/bills incurred by them as a result of their son’s death on grounds that such records are protected
 24 under HIPPA. *See id.* The response made no mention of the interrogatories served on the

26 ² Plaintiffs reside in Baton Rouge, Louisiana.

1 Administrator, nor did plaintiffs produce documents or respond to defendants concerns regarding the
 2 initial disclosures. Plaintiffs further indicated that they would appear for deposition only in Baton
 3 Rouge, LA. *Id.* Email correspondence ensued, but the parties were unable to resolve their differences.
 4 On July 8, 2010, the parties held a telephonic “meet and confer” conference on the issues. Defendants
 5 filed the instant Motion to Compel on July 13, 2010.

6 Defendants seek an order compelling (1) the Administrator to serve answers to the
 7 interrogatories and requests to produce without objections; (2) plaintiffs Ronald and Janie as heirs to
 8 serve separate answers to the written discovery served upon them and supplement their answers to
 9 Interrogatory Nos. 9, 10, 11, 12, 15, 16, 17, and 19; (3) plaintiffs Ronald and Janie as heirs to provide
 10 detailed responses to the Requests to Produce and cite the very exhibit supporting their contention; (4)
 11 all plaintiffs to provide a computation of damages pursuant to Rule 26; and (5) plaintiffs to travel to Las
 12 Vegas to attend their depositions. Mot. (#24) at 18-19. Additionally, defendants ask the court to award
 13 attorney’s fees and costs for bringing the motion (#24). *Id.* at 19.

14 **Discussion**

15 The court has broad discretion in controlling discovery. *Little v. City of Seattle*, 863 F.2d 681,
 16 685 (9th Cir. 1988). The scope of discovery is governed by Rule 26, which allows “discovery regarding
 17 any matter, not privileged, which is relevant to the subject matter of the pending litigation.” Fed. R.
 18 Civ. P. 26(b)(1). Relevancy is to be construed broadly to encompass any matter that bears on, or that
 19 reasonably could lead to other matter that bears on, any issue that is or may be in the case. *See*
 20 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citation omitted); *see also* Fed. R. Civ.
 21 P. 26(b)(1). A court may limit discovery if it determines, among other things, that the discovery is
 22 unreasonably cumulative or duplicative, obtainable from another source that is more convenient, less
 23 burdensome, or less expensive, or the burden or expense of the proposed discovery outweighs its likely
 24 benefit. Fed. R. Civ. P. 26(b)(2).

25 **Computation of Damages**

26 Pursuant to Rule 26(a)(1)(A)(iii), a party’s initial disclosures must contain a “computation of

1 each category of damages claimed by the disclosing party ... including materials bearing on the nature
 2 and extent of injuries suffered.” A party claiming damages has the obligation, when it makes its initial
 3 disclosures, to disclose to the other parties the best information then available to it concerning that
 4 claim, however limited and potentially changing it may be. *6-26 Moore’s Federal Practice - Civil* §
 5 26.22. Plaintiffs seek compensatory, special, and punitive damages. Complaint (#1) at ¶XV. Plaintiffs
 6 have not provided defendants with a computation of damages, nor do they address this portion of
 7 defendants’ Motion to Compel (#24). Their failure to do so may result in exclusion of such evidence
 8 pursuant to Rule 37.

9 **Defendants’ Request That Plaintiffs Supplement Answers to Written Discovery**

10 Defendants each served a set of interrogatories and a set of requests for production on each
 11 plaintiff. The discovery served on Janie and Ronald was essentially identical, while the discovery
 12 served on the Administrator involved distinct categories geared toward the estate’s claims. Janie and
 13 Ronald provided a “combined” answer to the written discovery, while the Administrator did not respond
 14 at all. Defendants request that each plaintiff be ordered to individually respond to written discovery.
 15 In addition, defendants ask the court to order Janie and Ronald to supplement their answers to
 16 Interrogatory Nos. 9, 10, 11, 12, 15, 16, and 19. Plaintiffs maintain that defendants propounded an
 17 inappropriate number of interrogatories and that a single, “combined” response is appropriate.

18 Plaintiffs’ Claim of Excessive Interrogatories

19 Defendants have served a total of 150 interrogatories on plaintiffs, of whom, by defendants’
 20 count, there are three. Plaintiffs state that defendants’ assertion that there are three plaintiffs “is simply
 21 absurd,” but do not elaborate further. Opp’n (#26) at 7. Defendants maintain that Janie and Ronald
 22 cannot be considered a single plaintiff in this matter, because they each shared a separate relationship
 23 to the decedent. Hence, the injury, whether “mental anguish, stress, loss of income, loss of relationship,
 24 love and comfort with their son . . . and/or loss of enjoyment of life,” Complaint (#1) at 6, will be
 25 distinct as to each parent; that the plaintiff parents “are married does not mean that they enjoyed an
 26 identical relationship with the Decedent.” *See* Mot. (#24) at 9; Reply (#28) at 4. The court finds that

1 Janie Joseph and Ronald Joseph, Sr. as plaintiff heirs in this matter, each claiming a loss of
2 companionship, are two separate plaintiffs, and must each provide individual answers to the
3 interrogatories. The Administrator likewise acts as a separate plaintiff in this action insofar as he is
4 asserting a Fourth Amendment claim for excessive force and a Fourteenth Amendment Equal Protection
5 claim on behalf of the estate. These are not, technically, the claims of Ronald Joseph, Sr., but of the
6 estate. The Administrator, therefore, is a separate claimant asserting claims which are distinct from the
7 heirs' claims.

8 Pursuant to Rule 33, each party is allowed to serve 25 interrogatories on each other party. As
9 explained, there are three plaintiffs: Ronald, Janie, and the Administrator. There are two defendants,
10 the LVMPD and Sgt. Bradshaw. Each defendant is entitled to serve on each plaintiff 25 interrogatories,
11 which number totals 150. This is what defendants have done; it is not improper. Each of the plaintiffs,
12 Janie as an heir, Ronald as an heir, and the Administrator must individually answer defendants'
13 discovery.

14 Interrogatory Nos. 9, 10, 15, 16, and 17

15 These five interrogatories generally seek information relating to the relationship between the
16 plaintiff heirs and their deceased son, including time spent with the decedent in the year preceding his
17 death; vacations taken with decedent in the three years preceding his death; all activities plaintiff and
18 the decedent participated in; what role plaintiff(s) played in the financial support of the decedent in the
19 three years prior to his death; and plaintiff(s)' knowledge of the days decedent spent in jail in the three
20 years preceding his death. Plaintiffs state, "This absurd and overly broad line of questioning was
21 propounded solely for the improper purpose of embarrassing, harassing, unduly burdening and
22 oppressing these grieving parents." Opp'n (#26) at 10. The court cannot agree with plaintiffs. These
23 categories of questions are directly relevant to both Ronald's and Janie's claim of a liberty interest in
24 the loss of companionship of their son. Moreover, plaintiffs' repeated boilerplate objection to the
25 interrogatories is not appropriate. An objection should state with particularity what the party alleges
26 to be objectionable such that the propounding party may respond. *See* Rule 33(b)(4) ("All grounds for

1 an objection to an interrogatory shall be stated with specificity.”) Ronald and Janie must individually
 2 supplement their answer(s) to the interrogatories.

3 Interrogatory No. 11

4 Interrogatory No. 11 inquires whether, as a result of the alleged occurrence, the plaintiff has
 5 contacted any medical professionals or any mental health counselors. Plaintiff heirs in the combined
 6 response, objected to Interrogatory No. 11, but stated, “Plaintiff(s) have contacted both medical
 7 professionals and counselors since their son’s death.” The combined answer may be an answer in the
 8 affirmative to the interrogatory; however, as explained above, plaintiffs must provide an individual
 9 response to the interrogatory.

10 Interrogatory No. 12

11 Interrogatory No. 12 requests that if the answer to No. 11 is affirmative, plaintiff identify the
 12 medical professional or counselor, “including the name, address, and inclusive dates for each visit or
 13 consultation.” Although plaintiffs answered Interrogatory No. 11 in the affirmative, they refuse to
 14 provide such information without a protective order, on the ground that the information is protected
 15 under HIPAA and the patient-doctor privilege applies.³

16 Generally, “[t]he privacy interest in one’s confidential medical records is conditional and a
 17 limited impairment of the right may be allowed if properly justified.” *Hutton v. City of Martinez*, 219
 18 F.R.D. 164, 166 (N.D. Cal. 2003) (citing *Soto*, 162 F.R.D. at 618). Interrogatory No. 12 does not ask
 19 for plaintiffs’ private medical information. The interrogatory merely asks for the name and location of
 20 relevant provider(s) and the date(s) on which plaintiffs sought care. This is relevant information
 21 inasmuch as plaintiffs claim that death of their son caused them to seek medical treatment, and they pray
 22 for compensation for the care. It is also information which should have been provided with plaintiffs’

23
 24 ³ Plaintiffs cite *E.R. Squibb & Sons, Inc. v. Accident and Cas. Ins. Co.*, 853 F. Supp. 98 (S.D.N.Y. 1994). Other
 25 than the single quote, “confidentiality of medical information dealing with identifiable individuals is an interest recognized
 26 under Fed.R.Civ.P. 26(c),” *E.R. Squibb*, 853 F. Supp. at 103, that opinion is unrelated to the facts presented here. Moreover,
 the opinion does not provide any analysis relevant to providing the names and addresses of a medical provider. Nor are the
 underlying facts in that matter remotely similar to the facts presented here.

1 initial disclosures. *See Rule 26(a)(1)* (Each party, without awaiting a discovery request, must provide
2 the other parties with “the name and, if known, the address and telephone number of each individual
3 likely to have discoverable information--along with the subjects of that information--that the disclosing
4 party may use to support its claims or defenses ...”). Ronald and Janie must individually provide a
5 complete answer to Interrogatory No. 12.

6 Interrogatory No. 19

7 Interrogatory No. 19 seeks the identity of “any witness to the alleged occurrence who has told
8 Plaintiff[s], either verbally or in written form that Sgt. Bradshaw used excessive or unnecessary force.”
9 Ronald and Janie objected in the combined response that the interrogatory “seeks a response covered
10 by attorney/client, work product privilege and/or any other privileged communication or information”
11 and seeks information not relevant to the litigation. Mot. (#24) at 15. Plaintiffs further asserted the
12 information “is readily available to and within the actual knowledge and control of Sgt. Bradshaw and
13 the Las Vegas Metropolitan Police Department.” *Id.*

14 Defendants maintain that plaintiffs have yet to generate any evidence to suggest excessive force,
15 and thus at the very least should be required to identify by bates stamp numbers the information they
16 believe establishes liability in this matter. *Id.* In their opposition, plaintiffs reproduced this
17 interrogatory and their combined answer, but they do not make any argument regarding the
18 interrogatory. *See Opp’n (#26) at 9-10.* Hence, defendants representations and arguments are
19 unchallenged. Ronald and Janie each must provide an answer to the interrogatory and provide
20 defendants with the bates stamp numbers of the documents they believe to establish liability in this
21 matter.

22 Requests for Production of Documents

23 Defendants next complain that plaintiffs responded to only one set of defendants’ requests to
24 produce documents, despite each plaintiff having been served with requests. Again, Ronald and Janie
25 provided a “combined” response, while the Administrator did not respond at all. Defendants’ “primary
26 frustration is Plaintiffs’ refusal to produce ‘any and all medical bills of the Plaintiffs related to the

1 complained of acts alleged in the Complaint,” which is Request No. 5. Mot. (#24) at 15. Plaintiffs
2 objected to this Request “on grounds of the Doctor/Patient Privilege, and that the documents sought are
3 protected in accordance with the Health Insurance Portability and Accountability Act (“HIPAA”)
4 privacy rules. . . . Plaintiffs will provide Defendants with the requested information upon execution of
5 a valid Protective Order to be determined and agreed upon by the parties herein.” *Id.* at Exh. 11. In
6 response to defendants’ Request Nos. 7, 8, 9, 10, 11, 12, 13, 14, and 15, the plaintiffs refer defendants
7 to documents “in control of Defendants,” but do not specify which documents in control of defendants
8 are responsive to each request. The Requests, Nos. 7 - 15, generally request production of evidence
9 supporting plaintiffs’ theory of liability. Defendants request the court to order plaintiffs to provide the
10 documents requested in Request No. 5 and to identify by bates stamp number the documents relevant
11 to Request Nos. 7 - 15.

12 Federal Rule of Civil Procedure 34(a) permits each party to serve the opposing party with
13 document requests within the scope of Rule 26(b) that are “relevant to the subject matter involved in
14 the action.” Rule 26(b)(1). A party may seek an order compelling discovery if the other party “fails to
15 respond that inspection will be permitted — or fails to permit inspection — as requested under rule 34.”
16 Rule 37(a)(3)(B)(iv). An evasive or incomplete response must be treated as a failure to respond. Rule
17 37(a)(4).

18 Plaintiffs do not address the portion of defendants’ motion related to the Requests for
19 Production. Accordingly, plaintiffs do not provide any support for the assertion that medical bills, as
20 opposed to plaintiffs’ detailed medical records, are protected under any privilege or HIPAA. Moreover,
21 the cost of medical care related to this matter is relevant to a computation of damages in this case. In
22 any event, plaintiffs’ failure to oppose this portion of the motion constitutes consent to the granting of
23 the relief requested. *See* LR 7-2(d). For that reason, and for good cause otherwise shown, plaintiffs will
24 be ordered to individually respond to the requests served on each of them. In addition, Janie and Ronald
25 must provide a full response to Request No. 5 and identify by bates stamp number the documents in
26 defendants’ possession which are purportedly responsive to Request Nos. 7 - 15, inclusive. To the

1 extent that an objection is appropriate, it must be stated with particularity, including legal support.

2 **Deposition Location**

3 Defendants noticed plaintiffs for deposition in Las Vegas, NV. The depositions are currently
4 scheduled for August 23, 2010. Plaintiffs, who reside in Baton Rouge, LA, assert that they would suffer
5 severe financial hardship were they forced to travel to Las Vegas for deposition. Opp'n (#26) at 13;
6 Joseph Aff., *id.* at Exh. 10. Additionally, plaintiffs represent that Janie suffers physical ailments which
7 limit her ability to travel. *Id.* Plaintiffs state that they would participate in Baton Rouge in person or
8 by video conference. Opp'n (#26) at 13. Finally, plaintiffs assert that this portion of the motion to
9 compel related to the depositions is premature.

10 “As a normal rule plaintiff will be required to make himself or herself available for examination
11 in the district in which suit was brought.” *United States v. Rock Springs Vista Dev.*, 185 F.R.D. 603,
12 604 (D. Nev. 1994) (quoting Charles Alan Wright, *et al.*, FEDERAL PRACTICE AND PROCEDURE § 2212
13 (1994)). It is the plaintiffs’ burden “to show good cause for varying from the normal rule.” *Rock*
14 *Springs*, 185 F.R.D. at 604. Other than conclusory assertions that travel to Las Vegas would subject
15 them to severe financial hardship and Janie’s travel is limited by unspecified ailments, plaintiffs fail to
16 make a showing of “extreme hardship.” *See id.* While plaintiffs filed an affidavit to support their
17 argument, the affidavit does not provide any factual support for plaintiffs’ assertions. Plaintiffs have
18 not met their burden to show good cause why they cannot travel to Las Vegas for face-to-face
19 depositions. Additionally, the court finds that the motion to compel deposition is not filed prematurely,
20 inasmuch as the parties had discussed the issue, including the exchange of legal arguments, and come
21 to an apparent impasse. Plaintiffs must attend their deposition in Las Vegas.

22 **Defendants’ Request for Sanctions**

23 Where a motion to compel is granted, the court must award the prevailing party its reasonable
24 expenses, including attorney’s fees, unless: (1) the movant failed to meet and confer in good faith before
25 filing the motion; (2) the responding party’s objection was substantially justified; or (3) other
26 circumstances would make an award of expenses unjust. Rule 37(a)(5). None of the exceptions apply

1 here. Accordingly defendants' request for sanctions in the form of reasonable expenses, including
2 attorney's fees, will be granted.

3 IT IS THEREFORE ORDERED that defendants Motion to Compel (#24) is GRANTED to the
4 extent that, not later than August 27, 2010:

5 1. Ronald Joseph, Sr., as a plaintiff heir, shall serve an individual set of answers to defendants'
6 Interrogatories and Request for Production of Documents. He is further ordered to supplement his
7 responses to Interrogatory Nos. 9, 10, 11, 12, 15, 16, 17, and 19, as described above; to supplement his
8 response to the Request for Production of Documents to provide a complete production for Request No.
9 5; and to identify by bates stamp number the documents in defendants' possession which are purportedly
10 responsive to Request Nos. 7, 8, 9, 10, 11, 12, 13, 14, and 15. Any proper objection to a request or
11 interrogatory must be stated with particularity and accompanied by a relevant argument.

12 2. Janie Joseph shall serve an individual set of answers to defendants' Interrogatories and
13 Request for Production of Documents. She is further ordered to supplement his responses to
14 Interrogatory Nos. 9, 10, 11, 12, 15, 16, 17, and 19, as described above; to supplement her response to
15 the Request for Production of Documents to provide a complete production for Request No. 5; and to
16 identify by bates stamp number the documents in defendants' possession which are purportedly
17 responsive to Request Nos. 7, 8, 9, 10, 11, 12, 13, 14, and 15. Any proper objection to a request or
18 interrogatory must be stated with particularity and accompanied by a relevant argument.

19 3. Ronald Joseph, Sr., in his capacity as administrator of decedent's estate, shall respond to the
20 defendants Interrogatories and Requests for Production of Documents served on him as the
21 Administrator. Any proper objection to a request or interrogatory must be stated with particularity and
22 accompanied by a relevant legal argument.

23 IT IS FURTHER ORDERED that, not later than August 27, 2010, each plaintiff shall provide
24 a computation of damages.

25 IT IS FURTHER ORDERED that plaintiffs shall appear for deposition in Las Vegas, NV at a
26 time and location convenient to the parties.

1 IT IS FURTHER ORDERED that plaintiffs shall pay the reasonable expenses, including
2 attorney's fees and costs, incurred by defendant in bringing the Motion (#24).

3 IT IS FURTHER ORDERED that defendant's counsel shall file an affidavit of fees and costs
4 not later than August 20, 2010.

5 IT IS FURTHER ORDERED that in all other respects the motion (#24) and plaintiffs'
6 countermotions are DENIED.

7 DATED this 13th day of August, 2010.

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10 **LAWRENCE R. LEAVITT**
11 **UNITED STATES MAGISTRATE JUDGE**

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